

MAINE WORKERS' COMPENSATION BOARD COMPLIANCE AUDIT REPORT

March 30, 2000

York Claims Services
111 John Street
New York, NY 10038-3193

Claims Covered by Audit: Claims with indemnity payments since August 1998.

Companies Covered by Audit:

AIG Claim Services / York Claims Services NCCI # 11983

Examination by: Michael R. Nadeau, Audit Manager
Marlene Swift, Auditor

Reviewed and Approved by: Steven Minkowsky, D.D.B.A.

The results of the audit and the procedures followed have been explained to:

Name:	Title:	Date:
Glenn Salka	Vice President	Various
Robert Frohlich	Supervisor	Various
Mikhael Ogunkeye	Adjuster	Various

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SUMMARY

AIG had 118 open residual market pool claims as of 6/30/99. The Audit Division of the Maine Workers' Compensation Board examined all 118 claim files for the period under examination to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Our audit revealed:

- The audit division engaged York Claims Services to conduct a compliance audit by way of certified mail sent to Norm Yacko 10/22/00, received 10/25/00. Mr. Yacko failed to reply. AIG, the parent of York, contacted the Audit division on 12/9/99 explaining Mr. Yacko's failure to respond and his termination from employment. Mr. Yacko was replaced by Mikhael Ogunkeye. Mr. Ogunkeye has responded promptly to all inquiries.
- AIG's residual market pool claims were transferred from MGA Services to York effective 8/1/98. The Board's Abuse Investigation Unit began receiving complaints regarding York's claim handling almost immediately. Over 20 complaints have been filed and 12 penalty orders have been issued to date. Five of the 12 were for failure to attend mediation.
- York is attempting to lump sum the outstanding claims.
- A complaint for unpaid medical bills was forwarded to the Audit Division by the Office of Medical/Rehab Services. The complaint involved numerous unpaid medical bills for a single claim totaling \$1,838.80. The bills were paid immediately after they were brought to their attention.
- One indemnity payment for two separate claims were found to have been made significantly late. Two indemnity payments for two other claims had been missed and were paid as a result of the audit.
- Five claims were determined to be owed cost of living allowances (COLA) and COLA adjustments going forward.

POTENTIAL PENALTIES

A. Section 205(3), M.R.S.A. Penalties (payable to injured employees)

"When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss."

Penalties pursuant to 39-A M.R.S.A. Sec. 205(3) are paid directly to the injured employee. The penalties below are being sought. If you disagree, you have the right to a hearing before the Abuse Investigation Unit. Please provide proof of payment for all undisputed penalties.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
Martha Flanigan vs. Ames Department Store Date of Injury: 5-16-90 York's File # 914559 WCB File # 90028249	Payment for incapacity from 8-14-98 to 10-30-98 was made 70 days after compensation became due and payable.	\$1,500.00
William Dagget vs. Sprague Energy Corp. Date of Injury: 1-17-89 York's File # 905213 WCB File # 89001737	Payment for incapacity from 3-27-99 to 4-2-99 was made 68 days after compensation became due and payable.	\$1,500.00
Michael Brooks vs. Paulsen Bros. Transportation, Inc. Date of Injury: 5-9-91 York's File # 925911 WCB File # 91021373	Payment for incapacity from 7-21-99 to 7-28-99 was made 254 days after compensation became due and payable.	\$1,500.00
Jeffery Ballard vs. Elwood H. Downs, Inc. Date of Injury: 5-16-89 York's File # 900886 WCB File # 89028516	Cost of living allowance was made nearly a year after it became due and payable.	\$1,500.00
Nancy Archambault vs. Kennebunk Nursing Home Date of Injury: 2-9-90 York's File # 910974 WCB File # 90006478	Cost of living allowance (2/9/00 through 5/9/00) was made 90 days after it became due and payable.	\$1,500.00

Larry Gordon vs. Harry Gordon Trucking
Date of Injury: 7-27-87
York's File # 904254
WCB File # 87047035

Cost of living allowance \$1,500.00
(7/27/99 through 5/4/00) was
made over a year after it became
due and payable.

Linda Tarr vs. Irvin Oil Corp.
Date of Injury: 12-1-89
York's File # 908727
WCB File # 89072875

Cost of living allowance \$1,500.00
(12/1/99 through 5/9/00) was
made 160 days after it became
due and payable.

Cost of living allowance \$1,500.00
(12/1/98 through 2/6/99) was
made 78 days after it became
due and payable.

Andre St. Pierre vs. Weldon King
Date of Injury: 12-18-91
York's File # 928140
WCB File # 91055978

Cost of living allowance \$1,500.00
(12/18/94 through 5/4/00) was
made over a year after it became
due and payable.

Daniel Porier vs. Dumas Inc.
Date of Injury: 10-2-89
York's File # 906366
WCB File # 89061828

Payment for incapacity from \$1,500.00
7-20-99 to 7-27-99 was made
nearly a year after compensation
became due and payable.

Total Penalties to Injured Employees

\$15,000.00

PENALTIES

B. Maximum Penalties Allowed by Law

◆ 39-A M.R.S.A. Sec. 324(2)(A)

“Except as otherwise provided by section 205, if an employer or insurance carrier fails to pay compensation as provided in this section, the board shall assess against the employer or insurance carrier a forfeiture of up to \$200 for each day of noncompliance.”

The Workers' Compensation Board may suspend execution of this section if York comes to an agreement and enters into a consent decree with the Board for penalties under Section 205(3).

◆ 39-A M.R.S.A. Sec. 359(2)

“In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act.”

◆ 39-A M.R.S.A. Sec. 360(1)(A)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;”

◆ 39-A M.R.S.A. Sec. 360(1)(B)

“The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act.”

Ten forms were filed late (\$1,000.00)

◆ 39-A M.R.S.A. Sec. 360(2)

“The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.

CASE MANAGEMENT TECHNIQUES

A. Penalties Miscoded

Penalties Assessed

	Number	Percent
Penalties Properly Coded	5	42%
Miscoded Penalties	7	58%
Total Penalties Assessed	12	100%

Total penalties assessed prior to audit: \$17,415